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August 10, 2022

VIA ECF

The Honorable Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square, Room 430
New York, New York 10007

Re: Roche Cyrulnik Freedman LLP v. Cyrulnik, Case No. 1:21-cv-01746 (JGK)

Dear Judge Netburn:

Pursuant to the Court's Individual Practices Rule II.C, we write on behalf of Counterclaim-Plaintiff Jason Cyrulnik regarding Plaintiff/Counterclaim-Defendant's refusal to appear for deposition this past Monday.

Since we were last before the Court, RCF has produced virtually no discovery, refused to sit for deposition, and slow-played the repeated attempts by Cyrulnik to move the fact discovery schedule along. It is apparent that RCF is seeking to leverage the impending fact discovery cutoff (currently set for September 30) and Cyrulnik's trial schedule (due to which Cyrulnik will be in Delaware from roughly August 22 through September 5) to continue to stymie his attempts to obtain basic information about Counterclaim-Defendants' illicit scheme as well as to force Cyrulnik to take fact depositions without the requisite documents, choose deponents without basic responses from RCF pursuant to the duly noticed 30(b)(6) deposition, and handicap his ability to expose the full extent of their misconduct.

The most egregious action Counterclaim-Defendants have taken in the context of discovery is now their unilateral refusal to sit for a duly noticed deposition, in the face of their unsuccessful attempt to seek "emergency" relief from this Court. (Dkt. No. 191.) Counterclaim-Defendants simply ignored the fact that they did not receive the protective order they sought, and refused to show up at a duly-noticed deposition. As noted in prior correspondence to this Court (Dkt. No. 192), they also have refused to appear any other date this week. The Counterclaim-Defendants are violating the rules and prejudicing Cyrulnik.

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Counterclaim-Defendants have also failed to produce any documents that the Court ordered them to produce 20 days ago (Dkt. No. 180), despite our repeated requests to do so.¹ They slow-played providing even basic hit reports for the targeted search that Cyrulnik requested and that the Court directed them to perform for days. They took an unreasonable 9 days to produce the handful of personal messages from a short, 10-day period of time the Court ordered them to produce (Dkt. No. 169). And they sought to control the sequencing of the depositions Cyrulnik would take, to try and force him to use the limited number of depositions he can take on witnesses before he learns the predicate facts that will facilitate his decision-making in that regard.

All the while, Counterclaim-Defendants seek to preserve their false narrative of Cyrulnik wanting to delay resolution of this matter (nothing could be further from the truth) as a sword they seek to yield every time he identifies recalcitrance that necessitates adjustment of schedules.

We respectfully request a conference with Your Honor to address these issues, and permission to file a motion for appropriate relief.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Gavin D. Schryver

Gavin D. Schryver

cc: Counsel of Record (via ECF)

¹ While counsel for Counterclaim-Defendants stated that he “should be in a position” to make a production “around the end of this week” (which would be 22 days after the Court ordered production), they still have yet to confirm whether that would be the start of a rolling production or a complete production.